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No. 94-2073

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In The

Supreme Court of the United States

October Term, 1995

RANDY EGLIN,

Petitioner,

v.

UNITED GAS PIPE LINE COMPANY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the District Court abused its discretion when it dismissed Petitioner's complaint with prejudice, pursuant to 28 U.S.C. Section 1915(d), where Petitioner had, in bad faith, filed a false Application to Proceed In Forma Pauperis.[1]

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[1] Pursuant to Supreme Court Rule 24.1(b), Respondent would note that, in addition to the parties to the proceeding which are identified by Petitioner, Respondent is now known as Koch Gateway Pipeline Company and its parent corporation is Koch Industries, Inc. Koch Gateway Pipeline Company has no subsidiaries other than wholly owned subsidiaries. Moreover, in addition to the attorneys identified by Petitioner, Respondent was represented in both the District Court and the Fifth Circuit by Ross W. Townsend, Esq. of Koch Industries, Inc.

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STATEMENT OF THE CASE

On December 2, 1992, Petitioner Randy Eglin commenced this action in the United States District Court for the Western District of Louisiana by filing, among other things, an Application to Proceed In Forma Pauperis (hereinafter referred to as the "IFP Application.") Pet. A-7.[2] The eighth question on the IFP Application asks, "Do you have any cash or money in a checking or savings account?" Pet. A-9. Mr. Eglin replied that he had only $610.94. Then, beneath the portion of the IFP Application that states, "I certify under penalty of perjury that the above information is true and correct to the best of my knowledge," Mr. Eglin signed his name and filed the document with the District Court. Pet. A-10.

On April 19, 1994, Respondent took Mr. Eglin's deposition. Pet. 9. In his deposition, Mr. Eglin testified that, for a period of time preceding December 2, 1992 up to the date of his deposition, he had maintained at least two separate savings accounts. Pet. 9. He further testified that the balance of each account had been in excess of $10,000 during that entire period. Pet. 9.

On April 26, 1994, Respondent filed a Motion To Traverse In Forma Pauperis Status And/Or Alternatively Motion To Dismiss. Pet. A-3. Respondent based its Motion on the fact that Petitioner had falsified his IFP Application. Pet. A-3. In response to Respondent's Motion, Petitioner presented no evidence whatsoever to

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[2] Citations to the Petition for Writ of Certiorari shall appear herein as "Pet. ___."

refute or explain why he had falsified his IFP Application. Pet. A-2. In light of Petitioner's failure to deny or explain why he had falsified his IFP Application, the District Court determined that Petitioner had willfully and in bad faith falsified the IFP Application. Pet. A-5. Then, relying on precedent from the Fifth Circuit and several other circuit courts, the District Court concluded that, in light of Petitioner's bad faith, dismissal with prejudice under 28 U.S.C. Sec. 1915(d) (hereinafter "Section 1915(d)") was the most appropriate sanction. Pet. A-5.

By decision dated February 10, 1995, the United States Court of Appeals for the Fifth Circuit affirmed the ruling of the District Court and held that the District Court had not abused its discretion by dismissing Petitioner's claims with prejudice. Pet. A-2.

SUMMARY OF THE ARGUMENT

I. The petition for writ of certiorari must be denied because Petitioner has failed to identify any "special and important reasons" for granting the writ in this case. Rather, Petitioner argues that certiorari should be granted because "the Fifth Circuit erred." Pet. 6. Various members of this Court have stated that error by the lower court, without more, is not adequate grounds upon which to base a writ of certiorari. Because the petition presents no other grounds upon which to base the writ, the petition must be denied.

II.A. The petition for writ of certiorari must also be denied because the Fifth Circuit did not err, as Petitioner

contends. 28 U.S.C. Sec. 1915(d) provides that dismissal of a plaintiff's claims is appropriate where the allegation of poverty in an IFP Application is untrue. Moreover, the Third, Sixth, Eighth, and Eleventh Circuits have held that dismissal with prejudice is appropriate if the plaintiff acted in bad faith. That holding is also supported by prior Fifth Circuit precedent.

In this case, Petitioner presented absolutely no evidence to deny or explain why he had falsified his IFP Application. In light of Petitioner's silence, the District Court properly concluded that Petitioner had acted in bad faith and that dismissal with prejudice was the most appropriate sanction. Pet. A-4, A-5. The Fifth Circuit properly concluded that the District Court had not abused its discretion in so ruling. Pet. A-2.

II.B. Petitioner's arguments in support of his position that the Fifth Circuit erred are without merit. First, Petitioner argues that the Fifth Circuit and the District Court erred because the District Court failed to apply the standards for dismissal with prejudice established in *Rogers v. Kroger.* Pet. 9. *Rogers* is not controlling in this case because *Rogers* does not address dismissals under Section 1915(d). Rather, *Rogers* deals with dismissals under FRCP 41(b). Petitioner also argues that the Fifth Circuit and the District Court erred because the District Court failed to consider lesser sanctions. Pet. 10. That argument is plainly wrong. The District Court's Memorandum Ruling and the Fifth Circuit's written decision clearly demonstrate that the issue of lesser sanctions was properly addressed. Pet. A-2, A-5.

ARGUMENT

I. THE PETITION MUST BE DENIED BECAUSE THE PETITION FAILS TO IDENTIFY ANY "SPECIAL AND IMPORTANT REASON" FOR ISSUANCE OF A WRIT OF CERTIORARI IN THIS CASE.

Rule 10.1 of the Supreme Court Rules provides that "[a] petition for a writ of certiorari will be granted only when there are special and important reasons therefore." The "special and important reasons" upon which a writ of certiorari may be granted, as enumerated by Rule 10, are (i) to resolve a split on a question of federal law among the lower courts, (ii) to correct an extreme departure by the lower courts from the accepted and usual course of judicial proceedings, or (iii) to resolve an important question of federal law. This Court has noted that "[c]ertiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' " *N.L.R.B. v. Pittsburgh S. S. Co.*, 340 U.S. 498, 502 (1951), *quoting Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923). In the absence of one of the "special and important reasons" enumerated in Rule 10 or a reason that is equally compelling, a petition for writ of certiorari must be denied.

In this case, Petitioner relies on none of the enumerated reasons in Rule 10 nor any other equally compelling reason. The sole basis upon which Petitioner seeks a writ of certiorari is found in a single sentence within the petition which provides that,

> The United States Court of Appeals for the Fifth Circuit erred in affirming the lower court's decision dismissing the petitioner's complaint with prejudice due to an inaccurate affidavit submitted in support of an in forma pauperis application and requires this Court to exercise its supervisory powers.

Pet. 6. In essence, Petitioner argues that, because the Fifth Circuit "erred," a writ of certiorari should issue. Nothing within Rule 10 indicates that simple error by the appellate court is sufficient to justify a writ of certiorari. If it were, virtually every litigant who disagrees with the decision of an appellate court might seek the opportunity to convince this Court that the appellate court was wrong. A showing of error with nothing more is simply not a "special and important reason" which justifies issuance of a writ of certiorari.

The fact that a petition must establish something more than simple error has been noted, at times, by various members of this Court. For example, Justice Stevens noted that, while error in the lower court may be "a relevant factor when this Court decides whether to exercise its discretionary certiorari jurisdiction . . . certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases." *Watt v. Alaska*, 451 U.S. 259, 275, n.5 (1981) (concurring opinion). In addition, Justice Frankfurter noted that certiorari jurisdiction "was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing." *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 521, 530-32, (1957) (dissenting opinion), *quoting Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923).

Because the petition in this case fails to establish a "special and important reason" for a writ of certiorari, the petition must be denied.[3]

II. THE PETITION MUST BE DENIED BECAUSE THE DECISION OF THE FIFTH CIRCUIT WAS NOT ERRONEOUS.

A. The Fifth Circuit properly affirmed the District Court's ruling.

Section 1915(d) provides that, in *in forma pauperis* cases, "the court . . . may dismiss the case if the allegation of poverty is untrue." Although Section 1915(d) does not specify whether the dismissal is to be with or without prejudice, the Third, Sixth, Eighth and Eleventh U.S. Circuit Courts of Appeals have found that the district court has broad discretion to dismiss claims with prejudice where the plaintiff has acted in bad faith. *Harris v. Cuyler,* 664 F.2d 388 (3rd Cir. 1981); *Thompson v. Carlson,* 705 F.2d 868, 869 (6th Cir. 1983); *Dawson v. Lennon,* 797 F.2d 934, 935 (11th Cir. 1986); *Romesburg v. Trickey,* 908 F.2d 258, 259

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[3] Respondent would also note that Petitioner's solitary reference to the Court's "supervisory powers" fails to meet the requirements of Supreme Court Rule 14.1(j). That Rule provides, in relevant part, that "[a] petition for writ of certiorari shall contain . . . [a] direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 10." In this case, the petition contains no argument – "direct," "concise" or otherwise – regarding the basis for allowance of a writ of certiorari. Although the petition discusses the Fifth Circuit's alleged error, nothing within the petition attempts to amplify, justify or explain why that alleged error justifies issuance of a writ of certiorari in this case.

(8th Cir. 1990). Moreover, *Harris* and *Dawson* have been cited with approval by the Fifth Circuit for the proposition that dismissal with prejudice under Section 1915(d) is appropriate if the plaintiff acted in bad faith. *Lay v. Justices-Middle District Court*, 811 F.2d 285, 286 (5th Cir. 1987).

In this case, the unrefuted facts demonstrate that, when Petitioner completed the Application to Proceed In Forma Pauperis he indicated that he had only $610.94 in a checking or savings account. Pet. A-9. The unrefuted facts also clearly demonstrate that he actually had a total of at least $20,000 in two separate savings accounts. Pet. 9. Although no one but Mr. Eglin can be certain about his motivation for falsifying the IFP Application, the facts strongly imply that Mr. Eglin intentionally lied about his financial condition so that he might obtain free access to the judicial system. At no point has Petitioner *ever* offered any evidence whatsoever to refute or explain-away the damning implications of these facts. The Fifth Circuit properly held that, in the absence of any contrary evidence, the District Court did not abuse its broad discretion when it determined that Petitioner had acted in bad faith and that dismissal with prejudice was appropriate.

The Fifth Circuit also considered the question of whether the District Court had abused its discretion by failing to consider alternative, lesser sanctions. The District Court noted in its Memorandum Ruling that,

> dismissal with prejudice is not appropriate when a lesser sanction would better serve the interests of justice, but there are no such lesser sanctions appropriate in this case. The interests

> of justice are best served by this court demanding that truth, the cornerstone of our justice system, be fundamental to the right to seek judicial redress of alleged wrongs. Based upon a foundation of blatant falsehood, this action must be dismissed with prejudice.

Pet. A-5. Thus, the District Court considered lesser sanctions and articulated a legitimate reason for rejecting such lesser sanctions. Consequently, the Fifth Circuit found that the District Court had acted within its broad discretion by ruling that lesser sanctions would not adequately serve the District Court's "interest in protecting its integrity and the integrity of the privilege of proceeding *in forma pauperis*." Pet. A-2.

B. Petitioner's arguments are without merit.

1. The guidelines established in *Rogers v. Kroger* are not controlling in this case.

Petitioner argues that the "Fifth Circuit erred in failing to employ the *Rogers* standard in determining the appropriateness of the lower court's action of dismissal." Pet. 9. Nothing within *Rogers v. Kroger Co.*, 669 F.2d 317 (5th Cir. 1982) makes any reference to Section 1915(d) or dismissals for the falsification of an *in forma pauperis* application. Rather, the issue in *Rogers* was the proper standard for dismissals under FRCP 41(b) for failure to prosecute. That fact is borne out by the Fifth Circuit's repeated references in *Rogers* to "delay," a factor which is central in a case dealing with a plaintiff's failure to prosecute his claims but has absolutely no relevance to a dismissal under Section 1915(d). Because the dismissal in

this case was made pursuant to Section 1915(d), the District Court did not abuse its discretion by declining to follow the irrelevant and inapplicable guidelines established in *Rogers*.

2. The District Court clearly considered less severe sanctions and properly found them to be inadequate.

Petitioner also alleges that the Fifth Circuit erred because "there is nothing in the district court's ruling nor the Fifth Circuit's decision indicating that less severe sanctions were considered and found to be futile or contrary to the interest of justice." Pet. 10. Of course, as set forth above, the District Court's Memorandum Ruling clearly discusses the issue of lesser sanctions and sets forth the District Court's rationale for rejecting such lesser sanctions. Pet. A-5. Moreover, the Fifth Circuit correctly noted in its decision that the District Court had considered lesser sanctions. Pet. A-2. Although Petitioner may not agree with the District Court's decision on this issue, the fact remains, as the Fifth Circuit found, that the District Court did not abuse its broad discretion by so deciding.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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